

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SUJANIE V.S.V. GAMAGE aka SUJANIE)
 GAMAGE-SAMARASEK,)

Plaintiff,)

vs.)

THE STATE OF NEVADA ex rel. BOARD OF)
 REGENTS OF THE NEVADA SYSTEM OF)
 HIGHER EDUCATION, on behalf of THE)
 UNIVERSITY OF NEVADA, LAS VEGAS; a)
 Political Subdivision of the State of Nevada;)
 VERNON HODGE, individually and in his official)
 capacity as an employee of the University of Nevada,)
 Las Vegas; and DOES I-XX inclusive,)

Defendants.)

Case No.: 2:12-cv-00290-GMN-VCF

ORDER

Pending before the Court is the Motion for Judgment on the Pleadings (ECF No. 14) filed by Defendant The State of Nevada *ex rel.* Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada, Las Vegas (“Defendant UNLV”). Plaintiff Sujanie Gamage-Samarasek (“Plaintiff”) filed a Response (ECF No. 17) and Defendant filed a Reply (ECF No. 18).

I. BACKGROUND

This case arises from the Plaintiff’s removal from the Chemistry Ph.D. program at the University of Nevada, Las Vegas. (Compl. ¶ 18, ECF No. 1.) Plaintiff began working on her dissertation in early 2010 and submitted a draft of that dissertation to her Ph.D. advisory committee on February 23, 2011. (*Id.* ¶ 9.) Subsequently, on June 14, 2011, Defendant Vernon Hodge (“Defendant Hodge”), a professor in the Department of Chemistry, filed a report alleging that “Plaintiff committed academic misconduct by submitting a dissertation that

1 contained plagiarized text.” (*Id.* at ¶¶ 3, 10.) In response to this report, on July 30, 2011,
2 Phillip Burns (“Burns”), the University of Nevada, Las Vegas (“UNLV”) Student Conduct
3 Coordinator, notified Plaintiff that Burns had “received information that Plaintiff may have
4 violated the Student Conduct Code by committing academic misconduct.” (*Id.* at ¶ 12.)

5 Thereafter, UNLV’s Academic Integrity Appeal Panel (the “Panel”) held a hearing on
6 October 20, 2011, at which Plaintiff was present. (*Id.* at ¶ 13.) After the hearing, the Panel
7 “issued findings that Plaintiff was responsible for academic misconduct based upon Defendant
8 Hodge’s allegations of plagiarism, that Plaintiff had multiple opportunities to correct the
9 plagiarism but did not, and that Plaintiff admitted to making ‘mistakes’ and did not know how
10 to correct those mistakes.” (*Id.*) Based on these findings, the Panel “recommended that
11 Plaintiff be removed from the Chemistry Ph.D. program because of plagiarism.” (*Id.*)
12 Accordingly, Plaintiff was removed from UNLV’s Chemistry Ph.D. program and “has been
13 prevented from completing her Chemistry Ph.D. program at UNLV. (*Id.* at 18-20.)

14 Plaintiff disputes that she committed any academic misconduct. (*Id.* at ¶¶ 10-11.)
15 Plaintiff also asserts that her rights were violated when she was prevented from being
16 represented and/or assisted by an advisor during the hearing before the Panel. (*Id.* at ¶ 15.)
17 Plaintiff further alleges that “no competent evidence was ever presented to support any of the
18 allegations made against Plaintiff.” (*Id.* at ¶ 17.) For these reasons, Plaintiff filed the instant
19 civil action asserting six causes of action: (1) breach of contract; (2) negligence/negligent
20 hiring, training & supervision; (3) intentional and negligent infliction of severe mental distress;
21 (4) injunctive and declaratory relief; (5) defamation, libel and slander per se; and (6) civil rights
22 violation, due process violation, Fifth and Fourteenth Amendment to the United States
23 Constitution. Plaintiff originally filed her Complaint on December 16, 2011 in the Eighth
24 Judicial District Court of Clark County, Nevada. (*See* Compl.; *See also* Notice of Removal 2:4-
25 7, ECF No. 1.) On February 22, 2012, Defendant removed the action to this Court alleging that

1 this Court has original jurisdiction pursuant to Title 28, section 1331 of the United States Code
2 because this action arises under the Constitution or laws of the United States. (Notice of
3 Removal 2:25-27.) Defendant further alleged that this Court has jurisdiction over Plaintiff's
4 state law claims pursuant to Title 28, sections 1441(c) and 1367 of the United States Code
5 because these claims form part of the same case or controversy as the claims over which the
6 Court has original jurisdiction. (*Id.* at 2:28-3:2.)

7 **II. LEGAL STANDARD**

8 Rule 12(c) of the Federal Rules of Civil Procedure provides that "[a]fter the pleadings
9 are closed—but early enough not to delay trial—a party may move for judgment on the
10 pleadings." Fed. R. Civ. P. 12(c). A motion filed pursuant to Rule 12(c) is "functionally
11 identical" to a motion filed pursuant to Rule 12(b)(6) for failure to state a claim. *Dworkin v.*
12 *Hustler Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989) ("The principal difference between
13 motions filed pursuant to Rule 12(b) and Rule 12(c) is the time of filing").

14 **A. Rule 12(b)(6) Legal Standard**

15 Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
16 that fails to state a claim upon which relief can be granted. *See North Star Int'l v. Ariz. Corp.*
17 *Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule
18 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not
19 give the defendant fair notice of a legally cognizable claim and the grounds on which it rests.
20 *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the
21 complaint is sufficient to state a claim, the Court will take all material allegations as true and
22 construe them in the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792
23 F.2d 896, 898 (9th Cir. 1986).

24 The Court, however, is not required to accept as true allegations that are merely
25 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*

1 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action
 2 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a
 3 violation is *plausible*, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
 4 *Twombly*, 550 U.S. at 555) (emphasis added).

5 A court may also dismiss a complaint pursuant to Federal Rule of Civil Procedure 41(b)
 6 for failure to comply with Federal Rule of Civil Procedure 8(a). *Hearns v. San Bernardino*
 7 *Police Dept.*, 530 F.3d 1124, 1129 (9th Cir.2008). Rule 8(a)(2) requires that a plaintiff's
 8 complaint contain only "a short and plain statement of the claim showing that the pleader is
 9 entitled to relief." Fed. R. Civ. P. 8(a)(2). Furthermore, the Supreme Court has already rejected
 10 any sort of "heightened" pleading requirement for § 1983 claims because such a heightened
 11 pleading standard cannot be "square[d] . . . with the liberal system of 'notice leading' set up by
 12 the Federal Rules." *Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*,
 13 507 U.S. 163, 164 (1993).

14 If the court grants a motion to dismiss, it must then decide whether to grant leave to
 15 amend. The court should "freely give" leave to amend when there is no "undue delay, bad
 16 faith[,] dilatory motive on the part of the movant . . . undue prejudice to the opposing party by
 17 virtue of . . . the amendment, [or] futility of the amendment" Fed. R. Civ. P. 15(a); *Foman*
 18 *v. Davis*, 371 U.S. 178, 182 (1962). Generally, leave to amend is only denied when it is clear
 19 that the deficiencies of the complaint cannot be cured by amendment. *See DeSoto v. Yellow*
 20 *Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

21 **III. DISCUSSION**

22 Section 1983 of Title 42 of the United States Code provides a private cause of action
 23 when a state or local official or other person acting under color of state law violates a private
 24 party's federally protected rights. *See* 42 U.S.C. § 1983.

25 Every person who, under color of any statute, ordinance, regulation,
 custom, or usage, of any State . . . , subjects, or causes to be subjected, any

1 citizen of the United States or other person within the jurisdiction thereof to
2 the deprivation of any rights, privileges, or immunities secured by the
3 Constitution and laws, shall be liable to the party injured in an action at
law, suit in equity, or other proper proceeding for redress . . .

4 42 U.S.C. § 1983. Pleading a constitutional violation under section 1983 need only satisfy the
5 pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure and the “plausibility
6 pleading” requirement of *Twombly* and *Iqbal*. In fact, the Supreme Court has rejected
7 arguments that any sort of heightened pleading standard should apply to section 1983 claims.
8 *See, e.g., Leatherman v. Tarrant Cnty. Narcotics Intelligence Coordination Unit*, 507 U.S. 163,
9 168 (1993) (rejecting a heightened pleading standard for section 1983 municipal liability
10 claims). Accordingly, when a plaintiff utilizes section 1983 to state a cause of action for a
11 violation of a federally protected right, that plaintiff need only allege sufficient facts that make
12 such a violation plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550
13 U.S. at 555) (emphasis added). Specifically, a plaintiff must allege both (1) a deprivation of a
14 federal right and (2) that the person who deprived the plaintiff of that right acted under color of
15 state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 In this case, Defendant UNLV argues that Plaintiff’s Complaint is deficient because the
17 Complaint lacks an actual citation to 42 U.S.C. § 1983. As Defendant UNLV itself recognizes,
18 section 1983 supplies only the procedural vehicle for asserting a cause of action for a
19 constitutional rights violation, not the underlying substantive rights. *See, e.g., Nabozny v. NCS*
20 *Pearson, Inc.*, 270 F. Supp. 2d 1201, 1204-05 (D. Nev. 2005) (“The pleader must also allege an
21 independent substantive basis for his claim . . .”). Defendant UNLV has failed to provide, and
22 the Court has been unable to independently locate, any authority for Defendant UNLV’s
23 argument that a Complaint that lacks a reference to this statute is vulnerable to a Motion for
24 Judgment on the Pleadings. Furthermore, as discussed below, Plaintiff’s Complaint adequately
25 pleads a section 1983 claim. Accordingly, the Court denies Defendant UNLV’s Motion for

Judgment on the Pleadings.

A. Plaintiff has pleaded a deprivation of a right secured by the Constitution.

In her Sixth Cause of Action, Plaintiff alleges that the actions of Defendant UNLV and of Defendant Hodge (collectively, “Defendants”) violated Plaintiff’s right to due process as secured by the Fifth and Fourteenth Amendments of the United States Constitution. (*See generally* Compl. ¶¶ 52-59, ECF No. 1.) Specifically, Plaintiff’s Complaint states a violation of her right to procedural due process rights. (*Id.* at ¶ 56.)

“A § 1983 action may be brought for a violation of procedural due process . . .” *Zinerman v. Burch*, 494 U.S. 113, 125 (1990). “In procedural due process claims, the deprivation by state action of a constitutionally protected interest in ‘life, liberty, or property’ is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law.*” *Id.* (emphasis in original) (citation omitted). Thus, to plead a violation of her constitutionally protected right to due process, Plaintiff must allege that (1) she was deprived of a constitutionally protected life, liberty, or property interest; and (2) Defendant UNLV failed to provide constitutionally adequate process. *See id.*

1. Constitutionally protected life, liberty, or property interest

In order to state a cause of action for deprivation of procedural due process, Plaintiff must first establish the existence of a life, liberty, or property interest for which the protection is sought. Here, Plaintiff’s Complaint alleges that Defendants deprived her of the property interest associated with her education. (Compl. ¶ 56, ECF No. 1.) To that end, the Supreme Court has already recognized that under certain situations, students have a property interest in their education, “which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.” *Goss v. Lopez*, 419 U.S. 565, 574 (1975).

“‘The Due Process clause also forbids arbitrary deprivations of liberty.’” *Id.* “Where a

1 person's good name, reputation, honor, or integrity is at stake because of what the government
 2 is doing to him,' the minimal requirements of the Clause must be satisfied." *Id.* (citations
 3 omitted). Here, Plaintiff alleges that through their actions in depriving her of due process,
 4 Defendants are "preventing her from returning to school, and effectively preventing her from
 5 being admitted to another institution of higher learning." (Compl. ¶ 53.)

6 For these reasons, the Court finds that Plaintiff has adequately pleaded a deprivation of
 7 constitutionally protected property and liberty interests.

8 **2. Constitutionally adequate process**

9 "Once it is determined that due process applies, the question remains what process is
 10 due." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Accordingly, Plaintiff must also plead
 11 sufficient facts to establish that Defendants plausibly denied her due process before depriving
 12 her of the previously discussed property and liberty interests. Here, Plaintiff has alleged that
 13 the procedures that Defendants followed were inadequate. (Compl. ¶ 53-55.) Specifically,
 14 Plaintiff alleged that Defendants "failed to allow Plaintiff to be represented and/or assisted by
 15 an advisor" during the hearing before the Academic Integrity Panel." (*Id.* at 15.) Plaintiff
 16 further alleged that this failure resulted in Plaintiff ineffectively representing herself at the
 17 hearing in violation of the rights secured to her by the United States Constitution. (*Id.*) For
 18 these reasons, the Court concludes that Plaintiff has adequately pleaded that the procedures
 19 used by Defendants in removing Plaintiff from the Chemistry Ph.D. program were
 20 constitutionally inadequate.

21 **B. Plaintiff has pleaded Defendant acted under color of state law.**

22 "The traditional definition of acting under color of state law requires that the defendant
 23 in a § 1983 action have exercised power possessed by virtue of state law and made possible
 24 only because the wrongdoer is clothed with the authority of state law.'" *West v. Atkins*, 487
 25 U.S. 42, 49 (1988) (citations and internal quotation marks omitted). Additionally, "if a


1 defendant's conduct satisfies the state-action requirement of the Fourteenth Amendment, that
2 conduct is also action under color of state law and will support a suit under § 1983." *Id.*
3 (citations and internal quotation marks omitted) ("In such circumstances, the defendant's
4 alleged infringement of the plaintiff's federal rights is fairly attributable to the State").
5 Ultimately, a public employee generally acts under color of state law "while acting in his
6 official capacity or while exercising his responsibilities pursuant to state law." *Id.* (citations and
7 internal quotation marks omitted).

8 Here, Plaintiff alleges that "[t]he actions of Defendants resulted from, and were taken,
9 pursuant to a *de facto* policy of Defendant UNLV, which is implemented by administrators,
10 directors, agents, and other employees of the said Defendants, *all acting under the color of law*,
11 who chose to violate Plaintiff's constitutional rights, without rightful authority of law . . ."
12 (Compl. ¶ 53.) Furthermore, Defendant UNLV has failed to provide a basis from which the
13 Court could conclude that Plaintiff's Complaint inadequately pleads that the Defendants in this
14 case were acting under color of state law. Therefore, the Court concludes that Plaintiff has
15 adequately pleaded this second element of her section 1983 claim.

16 **IV. CONCLUSION**

17 **IT IS HEREBY ORDERED** that the Motion for Judgment on the Pleadings (ECF No.
18 14) filed by Defendant The State of Nevada *ex rel.* Board of Regents of the Nevada System of
19 Higher Education is **DENIED**.

20 **DATED** this 19th day of March, 2013.

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24 _____
25 Gloria M. Navarro
United States District Judge